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SUPREME COURT, U.S.
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No. 92-1968

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

CORDELIA ANN BODIE,
Petitioner,

v.

CITY OF HUNTSVILLE, et al.,
Respondents.

Petition for Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether certiorari is due to be denied where the lower court cited a "heightened pleading requirement" for Section 1983 cases against municipalities as one basis for its opinion and the judgment is supported on other grounds.

Whether costs were properly taxed to the Petitioner when her lawsuit was dismissed for failure to state a claim and the dismissal was affirmed on appeal.

PARTIES

Cordelia Ann Bodie, Petitioner;

Errol Fitzpatrick, former Risk Manager, City of Huntsville, Alabama, Respondent;

Larry P. Hall, Benefits Analyst, Division of Insurance and Risk Management, City of Huntsville, Alabama, Respondent;

Jeff Hamilton, Employee of The Health Care Authority of the City of Huntsville, Alabama, Respondent;

Health Care Authority of the City of Huntsville d/b/a Huntsville Hospital, Respondent;

Steve Hettinger, Mayor of the City of Huntsville, Alabama, Respondent;

City of Huntsville, a municipal corporation in the State of Alabama, Respondent;

Ernest Kaufmann, former Councilmember, City of Huntsville, Alabama, Respondent;

Bill Kling, Councilmember, City of Huntsville, Alabama, Respondent;

Richard Liles, Administrative Assistant to the Mayor of the City of Huntsville, Respondent;

Charles Perry, Director of Human Resources, City of Huntsville, Respondent;

James Putnam, Councilmember, City of Huntsville, Alabama, Respondent;

Richard Showers, Councilmember, City of Huntsville, Alabama, Respondent;

James D. Thornton, III, Respondent;

James Wall, Jr., Councilmember, City of Huntsville, Alabama, Respondent;

Wikle, Thornton, Holcombe and Associates, Inc., Respondent.

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No. 92-1968

IN THE

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OCTOBER TERM, 1992

CORDELIA ANN BODIE,
Petitioner,

v.

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Petition for Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF OPINIONS BELOW

The opinion of the Eleventh Circuit affirming the district court's dismissal of the petitioner's action is unreported (App. A, *infra,* A1-A2). Also unreported are the district court's order dismissing the case (App. B, *infra,* A3-A4) and the Eleventh Circuit's order denying the petition for rehearing filed in that court (App. C, *infra,* A5).

STATEMENT OF JURISDICTION

The Court has discretionary jurisdiction to grant certiorari in this case pursuant to 28 U.S.C. § 1254(1). The Court of Appeals for the Eleventh Circuit entered its judgment in favor of the respondents and issued its opinion on March 3, 1993. The petitioner filed a petition for rehearing on March 22, 1993, and the petition was denied on April 12, 1993. The petitioner filed a petition for writ of certiorari in this Court on June 7, 1993.

STATUTES INVOLVED

42 U.S.C. § 1983 provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

On January 10, 1992, Petitioner Cordelia Ann Bodie, through her attorney of record, filed a complaint pursuant to 42 U.S.C. Section 1983 in the United States District Court for the Northern District of Alabama. (R.1-1-1). This complaint named fifteen separate defendants and contained four counts alleging violation of her civil rights. An amended complaint was filed on February 3, 1992, setting forth essentially the same factual averments and claims against the same defendants. (R.1-3-1).

In count one of her amended complaint, Petitioner alleges that the defendants conspired to deprive her of the employment of her choosing without due process and in violation of the Fourteenth Amendment. (R.1-3-9). Count two alleges that the defendants conspired to freeze out Petitioner from her employment at the city clinic by requiring her to work in an unsafe and unsanitary work environment, denying Petitioner equal protection of the laws guaranteed by the Fourteenth Amendment. (R.1-3-10-11). Count three alleges that the defendants conspired to compel Petitioner to leave her employment with the City of Huntsville in retaliation for her pursuit of her employee grievance in violation of her First Amendment Rights. (R.1-3-11). Count four alleges that the defendants conspired to interfere with and impair the value of a personal professional liability insurance policy held by the Petitioner in violation of Article I, Section 10, of the Constitution of the United States. (R.1-3-12).

Petitioner was formerly employed by the City of Huntsville as a registered nurse. (R.1-3-2). Respondents include the City of Huntsville, the City Councilmembers, the Mayor, the Mayor's Administrative Assistant, the City's Risk Manager and two successive City Personnel Directors. (R.1-3-3-4).

In her complaint, Petitioner avers generally that she initiated an employee grievance as to unsafe working conditions (R.1-3-6); that she appealed her grievance to the City Council and that a hearing was held (R. 1 - 3 - 7); that on January 11, 1990, the City Councilmembers disposed of her grievance by voting to approve a proposal for Respondent Huntsville Hospital to assume overall management of the city clinic and a nurse at the city jail and transfer Petitioner to the position of nurse at the city jail (R.1-3-8); that Respondent Perry presented Petitioner with a job description to become effective upon her transfer to the position of City Jail Nurse (R.1-3-8); that Perry refused to obtain a legal opinion of said job description (R.1-3-9); and that Petitioner resigned her employment as a result of Respondents' conduct.

(R.1-3-9). All other acts alleged by the petitioner occurred prior to January 10, 1990. (R.1-3-1-8). Nowhere in Petitioner's complaint does she claim that any alleged wrongful action was taken pursuant to a City policy or custom. (R.1-3-9-12).

All Defendants filed motions to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (R. 1-4,5,7,8,10). On February 12, 1992, the District Court entered an order setting out a briefing schedule for the Defendants' motions to dismiss. (R.1-9). On April 22, 1992, the District Court entered an order granting the motions to dismiss and taxing costs against Petitioner. (R.1-13-1-2).

Petitioner appealed to the Eleventh Circuit Court of Appeals on May 15, 1992. (R.1-19). On March 3, 1993, the Eleventh Circuit affirmed the dismissal of this action and ordered Petitioner to pay the costs on appeal. (App. D, *infra*, A6-A7). Petitioner filed a petition for rehearing on March 22, 1993, which was denied by the Eleventh Circuit on April 12, 1993. (App. C, *infra*, A-5).

SUMMARY OF THE ARGUMENT

The petition for writ of certiorari is due to be denied. The "heightened pleading requirement" disallowed in *Leatherman* for Section 1983 actions against municipal defendants was merely one reason cited by the Eleventh Circuit in affirming the dismissal of Petitioner's lawsuit. The petitioner failed, under a notice pleading standard, to state a claim against the municipal respondent or any other respondent.

The factual contentions in Petitioner's complaint demonstrate that the individual respondents are entitled to absolute legislative immunity and/or qualified immunity. Petitioner has also averred facts sufficient to demonstrate that this action is barred by the applicable statute of limitations. Thus, Petitioner has effectively pled herself out of court.

The routine assessment of costs against Petitioner by the lower courts was not error. Respondents are prevailing parties within the meaning of the Federal Rules of Civil Procedure and the Federal Rules of Appellant Procedure and the lower courts did not abuse their discretion in awarding costs to Respondents.

ARGUMENT

I. THE JUDGMENT REACHED BY THE ELEVENTH CIRCUIT IS CORRECT AND CRITICISM OF THE LEGAL REASONING IN THE OPINION BELOW IS AN INSUFFICIENT BASIS FOR REVIEW, THUS CERTIORARI IS DUE TO BE DENIED.

The Eleventh Circuit reached the correct result in affirming the opinion of the District Court which held that Petitioner failed to state a claim actionable under 42 U.S.C. Section 1983. Where the judgment rests on adequate grounds, the legal analysis in the lower court opinion does not merit review. See *Black v. Cutter Lab.*, 351 U.S. 292, 298 (1956).

The Eleventh Circuit cited a "heightened pleading requirement" in affirming the dismissal of Petitioner's lawsuit, since disallowed in civil rights actions brought against municipalities in *Leatherman v. Tarrant City Narcotics Unit*, 113 S. Ct. 1160 (1993). However, Petitioner has failed to state a cause of action under any standard of pleading because Petitioner's complaint does not allege the violation of a constitutionally protected right.

The lengthy recitation of facts in Petitioner's complaint also reveals the insufficiency of her case. Petitioner has pled facts which, when assumed true, prove on the face of her complaint that her claims against the respondents are barred by immunity and the statute of limitations. "...[A] plaintiff can plead himself out of court by unnecessarily alleging facts which demonstrate...that he has no legal claim." *Trevino v. Union Pacific R.R. Co.*, 916 F.2d 1230, 1234 (7th Cir. 1990). The judgment dismissing Petitioner's complaint is correct and certiorari is due to be denied.

A. Petitioner has failed to state a cognizable claim under 42 U.S.C. Section 1983.

Petitioner is required to give "fair notice of what [her] claim is and the grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957). Petitioner's rambling, voluminous complaint fails to allege facts which demonstrate a constitutional injury.

A lengthy, confusing and conclusory complaint may be properly dismissed for failure to comply with Rule 8 of the Federal Rules of Civil Procedure requiring "short and plain" statements of claim. *Hatch v. Reliance Ins. Co.*, 758 F.2d 409, 415 (9th Cir.) *cert. denied*, 474 U.S. 1021 (1985). Petitioner's complaint, characterized by the District Court as twenty pages of "single spaced typewritten legal silliness", was correctly dismissed.

1. Petitioner's conclusory allegations of conspiracy are insufficient to state a cause of action.

Petitioner's complaint contains a lengthy and rambling recitation of unrelated factual contentions occurring over a period of six years. These allegations are followed by a statement that she has been the victim of a conspiracy by all of the various defendants. This type of "shotgun" litigation has been condemned by the courts. *Fullman v. Graddick*, 739 F.2d 553, 557 (11th Cir. 1984). "In conspiracy cases, a defendant must be informed of the nature of the conspiracy which is alleged." *Id.*

Petitioner has wholly failed, under a notice pleading standard, to allege facts which support her conclusion that she is the victim of a conspiracy. Her conspiracy claim is not maintainable under Section 1983.

2. Petitioner's claim that she was deprived of a safe working environment is not redressable under Section 1983.

This Court recently addressed the issue of safety in the work place as a constitutional violation in *Collins v. Harkers Heights*, 112 S.Ct. 1061 (1992). The Court considered and rejected broadening Section 1983 to encompass unsafe working environment claims. Petitioner's contention that she was not provided a safe working environment does not fall within the purview of a Section 1983 claim.

3. Petitioner has no constitutionally protected property interest to continued assignment at the city clinic.

Petitioner contends that she was constructively discharged as a result of the City Council's vote to transfer her from one nursing assignment to another. However, transfers and reassignments have generally not been held to implicate a property interest. See *Maples v. Martin*, 858 F.2d 1546, 1550 (11th Cir. 1988) (citations omitted). Petitioner's transfer without loss of pay or rank does not rise to the level of a constitutional wrong nor state a claim for relief under Section 1983.

4. Petitioner fails to state a claim for violation of her First Amendment rights.

The facts alleged in Petitioner's complaint do not form the basis for a First Amendment claim. The "speech" alleged by Petitioner in her complaint concerned her personal working conditions. Whether speech by an employee relates to a matter of public concern or is a matter of personal interest to the employee is a question of law to be determined by the Court. *Deremo v. Watkins*, 939 F.2d 908, 910 (11th Cir. 1991).

> [W]hen a public employee speaks not as a citizen upon matters of public concern, but instead as an employee upon

> matters only of personal interest, absent the most unusual circumstances, a federal court is not the appropriate forum in which to review the wisdom of a personnel decision taken by a public agency allegedly in reaction to the employee's behavior.

Connick v. Myers, 461 U.S. 138, 147 (1983).

Grievances by employees concerning personal working conditions do not constitute matters involving speech or matters of public concern. See *Ballard v. Blount*, 581 F.Supp. 160, 166 (N.D. Ga. 1983), *aff'd*, 734 F.2d 1480 (11th Cir.), *cert. denied*, 469 U.S. 1086 (1984). The speech for which Petitioner claimed she was retaliated against concerned matters of purely personal concern. Such speech is not constitutionally protected and Petitioner has no maintainable First Amendment claim.

5. Petitioner's claim of governmental impairment of a contractual relationship is outside the sphere of protection offered by Section 1983.

Petitioner's claim that various defendants conspired and acted in concert to interfere with a private contractual relationship was properly dismissed. The bar against governmental impairment of contractual obligations contained in Article I, Section 10 of the United States Constitution has never been incorporated into the sphere of the Fourteenth Amendment and is therefore not redressable under Section 1983. *Stone Mountain Game Ranch, Inc. v. Hunt*, 570 F. Supp. 238 (N.D. Ga. 1983), *aff'd*, 746 F.2d 761 (11th Cir. 1984).

6. Petitioner states no claim against the City of Huntsville.

A municipality can be found liable under Section 1983 only where the municipality itself causes the constitutional violation at issue. Respondeat superior or vicarious liability will not

attach. *Monell v. Dep't of Social Services*, 436 U.S. 658, 694-695 (1978). Petitioner does not claim that any allegedly wrongful act was done pursuant to policy or custom of the City. While *Leatherman* struck down a "heightened pleading requirement" for municipal defendants, it did not sanction the complete absence of any averment that the alleged wrongful conduct conformed to official policy or custom. The City of Huntsville and all of the "official capacity" claims were properly dismissed.

B. Petitioner's claims against Respondents are barred by the statute of limitations.

In an action under 42 U.S.C. Section 1983, the relevant statute of limitations is determined by a state's general or residual statute of limitations governing personal injury action. *Owens v. Okure*, 448 U.S. 235, 249-250 (1989). The general residual statute of limitations in Alabama provides a two year period for bringing personal injury actions. Ala. Code Section 6-2-38(1)(1975). *Foster v. Board of Sch. Comm'rs.*, 872 F.2d 1563, 1567 n. 4 (11th Cir. 1989). Virtually all of the allegedly wrongful acts complained of occurred prior to January 10, 1990. Petitioner's complaint was not filed until January 10, 1992.

Respondent Perry is alleged to have failed to obtain a legal opinion concerning Petitioner's proposed job description within the statute of limitations period. Assuming the truth of this claim, Petitioner has failed to allege a deprivation of a constitutionally protected right.

The only other act alleged by Petitioner to have occurred within two years of the filing of her complaint is the vote by the City Council to approve the proposal for Huntsville Hospital to assume overall management of the city clinic and a nurse at the city jail and to transfer plaintiff to the position of nurse at the city jail. An internal transfer does not implicate a property interest, thus this claim also fails to allege an unconstitutional deprivation. On the face of her complaint, all other claims alleged by Petitioner are barred by the statute of limitations.

C. The individual respondents are entitled to immunity from suit.

The facts alleged by Petitioner show that the individual respondents are entitled to absolute or qualified immunity from suit. Petitioner has alleged no facts sufficient to overcome a defense of immunity.

1. Respondent City Councilmembers are entitled to absolute legislative immunity in the exercise of legislative decision-making.

The City Councilmembers, as municipal legislators, are absolutely immune from suit under Section 1983 for acts arising out of their legislative activity. See *Lake Country Estates, Inc. v. Tahoe Regional Planning Agency*, 440 U.S. 391, 405 (1979). The vote of the City Councilmembers constitutes an exercise of legislative decision-making. See *Espanola Way Corp. v. Myerson*, 690 F.2d 827, 829 (11th Cir. 1982), *cert. denied*, 460 U.S. 1039 (1983).

A City Council vote to contract with an outside agency for city services is an action taken in its legislative capacity, thus the Councilmembers are immune from Section 1983 personal liability. *Healy v. Town of Pembroke Park*, 831 F.2d 989, 993 (11th Cir. 1987). Under the facts alleged, the City Council was acting in a legislative capacity in its vote on January 11, 1990, and the Councilmembers are thus immune from Section 1983 liability.

2. Qualified immunity protects the individual respondents from suit.

Once a claim of qualified immunity is raised, the first inquiry in examining the claim is whether the plaintiff has alleged a clearly established constitutional right. *Siegert v. Gilley*, 111 S.Ct. 1789, 1793 (1991). Under this analysis, "[a] necessary concomitant to determination of whether the constitutional right asserted by the plaintiff is clearly established at the time the

defendant acted is the determination of whether the plaintiff has asserted a violation of a constitutional right at all." *Id.* Petitioner has failed to assert the violation of any constitutional right.

The contours of the right must also be sufficiently defined so that a reasonable person would understand that he is violating that right. *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). Here Petitioner has failed to allege any act or omission which could be construed to be a violation of "clearly established" constitutional law. The individual respondents are entitled to qualified immunity.

II. THE LOWER COURTS DID NOT ERR IN AWARDING COSTS TO RESPONDENTS AS PREVAILING PARTIES.

Petitioner contests the routine taxing of costs against her although her lawsuit was properly dismissed and the dismissal was affirmed on appeal. Rule 54(d) of the Federal Rules of Civil Procedure directs that "...costs shall be allowed as of course to the prevailing party unless the court otherwise directs...." Rule 39(a) of the Federal Rules of Appellate Procedure provides that "...if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered...." Prevailing parties are generally entitled to costs of litigation. *Kentucky v. Graham*, 473 U.S. 159, 164 (1985). A favorable ruling on a motion to dismiss is tantamount to a judgment on the merits and entitles defendants to an award of costs as the prevailing party. *Burda v. M. Ecker Co.*, 954 F.2d 434, 440 n.9 (7th Cir. 1992).

The cases cited by Petitioner are inapposite in that they concern the award of attorney's fees pursuant to 42 U.S.C. 1988. The lower courts properly exercised their discretion to award costs to the respondents.

CONCLUSION

For the reasons set forth herein, the petition for writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 92-6441
Non-Argument Calendar

D.C. Docket No. 92-N-103

CORDELIA ANN BODIE,
Plaintiff-Appellant,

versus

CITY OF HUNTSVILLE;
WIKLE, THORNTON, HOLCOMBE & ASSOCIATES, INC.;
HEALTHCARE AUTHORITY,
THE CITY OF HUNTSVILLE, dba Huntsville Hospital;
STEVE HETTINGER; ERNEST KAUFMAN;
BILL KLING, JR.; JAMES PUTNAM;
RICHARD SHOWERS; JAMES WALL, JR.;
ERROLL FITZPATRICK; LARRY P. HALL;
RICHARD LILES; CHARLES PERRY; JEFF HAMILTON;
JAMES D. THORNTON, III,
Defendants-Appellees.

Appeal from the United States District
for the Northern District of Alabama

(March 3, 1993)

Before ANDERSON, DUBINA and CARNES, Circuit Judges.

PER CURIAM:

Appellant Cordelia Ann Bodie ("Bodie"), filed a pro se civil rights complaint under 42 U.S.C. § 1983 in the United States District Court for the Northern District of Alabama alleging that

the defendants conspired to violate her constitutional rights. The district court dismissed the complaint for failure to state a claim upon which relief could be granted. Moreover, the district court held that Bodie's vague and conclusory allegations of conspiracy were insufficient to state federal constitutional claims.

Our review of the record persuades us that the district court was correct in dismissing Bodie's complaint. We have consistently held that mere conclusory allegations are insufficient to state a claim under 42 U.S.C. § 1983, particularly for conspiracy claims. *See Oladeinde v. City of Birmingham*, 963 F.2d 1481, 1485087 (11th Cir. 1992) (vague allegations, unsupported by specific facts, constitute no basis for a section 1983 action); *Fullman v. Graddick*, 739 F.2d 553, 556 (11th Cir. 1984) ("[i]n civil rights and conspiracy action,... more than mere conclusory, notice pleading is required"). Furthermore, absent a loss of pay or rank, there is no Fourteenth Amendment interest implicated by job transfer. *See Oladeinde*, 963 F.2d at 1486.

Bodie's claims of conspiracy lack the specificity required in civil rights actions and, in any event, she failed to allege how the defendants abridged her free speech rights or any other constitutional right.

For the foregoing reasons, we affirm the judgment of the district court.[1]

AFFIRMED.

---

[1] There is also pending in this cause the appellees' motions to strike portions of appellant's brief which we deny as moot.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

CV-92-N-0103-NE

CORDELIA ANN BODIE,
Plaintiff,

vs.

CITY OF HUNTSVILLE, et al.,
Defendants.

Order of Dismissal

This civil action is before the court on motion of all the defendants to dismiss pursuant to Rule 12(b)(6), Fed.R.Civ.P., for failure to state a claim upon which relief can be granted. The motions have been briefed and submitted for decision. After one complaint, one amended complaint and a proffered second amended complaint, the plaintiff has presented the court with nothing more than twenty pages of single spaced, typewritten, legal silliness. The motions to dismiss will be granted and the action will be dismissed.

According to the complaint, as last amended, the plaintiff Cordelia Ann Bodie was employed by the City of Huntsville, Alabama, as City Nurse from May 19, 1976, until July 30, 1990, when she resigned her employment. She claims that the defendants conspired to create intc erable working conditions so as to deprive her of the right to employment with the City of Huntsville. The plaintiff recites a series of seemingly unrelated events that allegedly occurred over a period of approximately six years and concludes that she has been the victim of a conspiracy. Vague and conclusory allegations of conspiracy are insufficient

as a matter of law to state federal constitutional claims. *Fullman v. Graddick*, 739 F.2d 553 (11th Cir. 1984).

Without recounting all the many details alleged by the plaintiff, it is sufficient to note that she fails to allege any violation of any federally protected right. Almost without exception, she recounts events having to do with the decision of the City of Huntsville to cease the operation of a City Clinic, of which she was director, and to transfer the functions of that clinic to a public hospital, defendant Healthcare Authority of Huntsville. She claims that she was forced to resign her employment after she was transferred to the city jail because of intolerable working conditions but fails to allege facts which, if proven, would demonstrate that conditions were, in fact, intolerable. She does not claim that she filed any grievance concerning the alleged conditions at the jail. *See, Garner v. Wal-Mart Stores, Inc.*, 807 F.2d 1536 (11th Cir. 1987).

As noted at the Rule 16(b) conference in this case, the action, at least as to most defendants, is patently frivolous and may entitle them to an award of attorney fees under 42 U.S.C. § 1988.

The action is **DISMISSED** and costs are taxed against the plaintiff.

Done, this 22nd of April, 1992.

/s/Edwin L. Nelson
EDWIN L. NELSON
UNITED STATES
DISTRICT JUDGE

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 92-6441

CORDELIA ANN BODIE,
Plaintiff-Appellant,

versus

CITY OF HUNTSVILLE; WIKLE, THORNTON, HOLCOMBE & ASSOCIATES, INC.; HEALTHCARE AUTHORITY, THE CITY OF HUNTSVILLE, dba Huntsville Hospital; STEVE HETTINGER; ERNEST KAUFMAN; BILL KLING, JR.; JAMES PUTNAM; RICHARD SHOWERS; JAMES WALL, JR.; ERROLL FITZPATRICK; LARRY P. HALL; RICHARD LILES; CHARLES PERRY; JEFF HAMILTON; JAMES D. THORNTON, III,
Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Alabama

ON PETITION FOR REHEARING

BEFORE: ANDERSON, DUBINA, and CARNES, Circuit Judges.

PER CURIAM:

The petition for rehearing filed by appellant Cordelia Ann Bodie is denied.

ENTERED FOR THE COURT:
/s/ JOEL F. DUBINA
United States Circuit Judge
April 12, 1993

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 92-6441
Non-Argument Calendar

D.C. Docket no. 92-N-103-NE

CORDELIA ANN BODIE,
Plaintiff-Appellant,

versus

CITY OF HUNTSVILLE; WIKLE, THORNTON, HOLCOMBE & ASSOCIATES, INC.; HEALTHCARE AUTHORITY, THE CITY OF HUNTSVILLE, dba Huntsville Hospital; STEVE HETTINGER; ERNEST KAUFMAN; BILL KLING, JR.; JAMES PUTNAM; RICHARD SHOWERS; JAMES WALL, JR.; ERROLL FITZPATRICK; LARRY P. HALL; RICHARD LILES; CHARLES PERRY; JEFF HAMILTON; JAMES D. THORNTON, III,
Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

Before ANDERSON, DUBINA and CARNES,
Circuit Judges.

JUDGMENT

[Entered: March 3, 1993]

This cause came to be heard on the transcript of the record from the United States District Court for the Northern District of

Alabama, and was taken under submission by the Court upon the record and briefs on file, pursuant to Eleventh Circuit Rule 34-3;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby AFFIRMED:

It is further ordered that plaintiff-Appellant pay defendants Appellees the costs on appeal to be taxed by the Clerk of this Court.

For the Court: Miguel J. Cortez,

By: /s/ Karleen McNabb
Deputy Clerk

Issue as Mandate April 26, 1993